



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,181	04/23/2007	Gianfranco D'Amato	03910/0211512-US0	7651

26211 7590 08/04/2010
FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER

DEMERE, CHRISTOPHER R

ART UNIT	PAPER NUMBER
----------	--------------

3782

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

08/04/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary	Application No. 10/583,181	Applicant(s) D'AMATO, GIANFRANCO	
	Examiner CHRISTOPHER DEMEREE	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-11 and 22-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11 and 22-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-7, 9-11 and 22-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The newly added limitation, "wherein inner edges of the peripheral recesses extend at least in part along an overlap line" is not supported by the disclosure. Specifically, Examiner notes that each respective recess and its inner edge extends partially along only one overlap line and not the opposing overlap line. There is no support for the left recess inner edge extending at least in part over the right overlap line.

3. Claims 1-7, 9-11 and 22-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Examiner notes that the disclosure defines two overlap lines; one on each opposing end of the blank. Therefore, claim language "the peripheral recesses extend at least in part along an overlap line" is unclear since the overlap line is not clearly defined (i.e. it's unclear whether both overlap lines are meant to be included, or just one; and if just one is meant by the claims, it is

Art Unit: 3782

unclear which one of the two is to be considered). Moreover it is unclear how the inner edge of the left recess is along the same overlap line as the inner edge of the right recess.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-7, 9-11, 22, 25-28, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benedetti (US 2153911 A) in view of Probst, Jr. (US 3482765 A; hereinafter Probst).

Regarding claims 1-3, 5-7, 11 and 22, Benedetti teaches a container comprising an upper and a lower peripheral edge and first and second connection edges (overlap between 8 and 9) laterally connecting said peripheral edges, one edge extending along the overlap region comprising at least one peripheral recess that is open to the outside (recess 10) which are interconnectable for shaping the container; and a bottom (7). Benedetti lacks a recess formed in each of the overlap edges.

Probst teaches an envelope construction comprising a peripheral recess (14, 16, 18 and 20) formed in the edge of each opposing side panel of an overlap region (see Figures 1 and 2). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Benedetti's container to include a matching recess cut into the edge of both overlapping panels (8 as well as 9) while maintaining

both the contents viewing functionality (Probst; Col 1 lines 5-10) and strength characteristics (Probst; Column 1 lines 20-25).

Examiner notes that the "overlap line" defined in the present application is an arbitrary line defined by the terminating edge of the respective opposing overlapping peripheral end of the blank. Examiner considers Benedetti, as modified above, to present an overlap line in respective ends of the blank when a recess exists in each of said opposing peripheral ends. Each recess would extend at least in part along said overlap line in order to accomplish the creation of the view window while maintaining the integrity of the container. An example of how the recesses extend along the overlap line is best shown by Figure 2 of the Probst reference.

Regarding claims 4 and 10, Benedetti, as modified above, discloses a container wherein the peripheral recess is rectangular (Benedetti; 10).

Regarding claim 9, Benedetti, as modified above, teaches a container characterized in that the peripheral opening is at least surrounded in part by a coating area (Benedetti; Col 2 lines 1-5).

Regarding claims 25-28, 30 and 31, Benedetti, as modified above, teaches a container wherein the at least one inspection opening is sealed in fluid tight fashion by a transparent film (Benedetti; 11).

6. Claim 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benedetti in view of Probst as applied to claim 22 above, and further in view of Seufert (US 5031826 A).

Regarding claims 23 and 24, Benedetti, as modified above, discloses the claimed invention except for a lower peripheral edge of the container including a receiving channel that is adapted to receive a peripheral flange of the bottom member (i.e. cup shaped).

Seufert teaches a cup comprising an inspection window (see Fig. 5) wherein the lower peripheral edge of the container includes a receiving channel that is adapted to receive a peripheral flange of the bottom member (see Figures 8-10) and an upper peripheral edge that includes a rolled flange (see Figures 11 and 12). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Benedetti's container to be cup shaped in order to hold suitable contents (Seufert; Col 1 lines 5-10).

7. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benedetti in view of Probst as applied to claim 25 above, and further in view of Nelson et al. (US 6378763 B1; hereinafter Nelson).

Regarding claim 29, Benedetti, as modified above, discloses the claimed invention except the receptacle comprising an imprint or coloration. Nelson teaches a container comprising indicia printed thereon (Col 5 lines 1-5). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further modify Benedetti's receptacle to include indicia in order to provide a label, as taught by Nelson.

Response to Arguments

8. Applicant's arguments filed 5/19/2010 have been fully considered but they are not persuasive. Applicant argues that the prior art fails to teach an inner edge of the peripheral recesses that extend along an overlap line.

Examiner notes that an "overlap line" as defined in the present application is an arbitrary line defined by the terminating edge of the respective opposing overlapping peripheral end of the blank. Examiner considers Benedetti, as modified above, to present an overlap line in respective ends of the blank when a recess exists in each of said opposing peripheral ends. Each recess would extend at least in part along said overlap line in order to accomplish the creation of the view window while maintaining the integrity of the container. An example of how the recesses extend along the overlap line is best shown by Figure 2 of the Probst reference, and not Figure 4 as Applicant contends.

Conclusion

9. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3782

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER DEMEREE whose telephone number is (571)270-1982. The examiner can normally be reached on Mon-Fri, 8:00 AM-5:00PM, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Demeree/
Examiner, Art Unit 3782

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782